

P-421/M-89-254 ORDER APPROVING NEW RATES FOR CUSTOMER-OWNED PAY-
TELEPHONES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Northwestern
Bell Telephone Company's Proposal
to Change its Rates for Customer-
Owned Pay Telephones

ISSUE DATE: March 29, 1991

DOCKET NO. P-421/M-89-254

ORDER APPROVING NEW RATES FOR
CUSTOMER-OWNED PAY-TELEPHONES

PROCEDURAL HISTORY

On April 18, 1989, U S West Communications, Inc. (USWC or the Company), then operating as Northwestern Bell Telephone Company (NWB or the Company),¹ filed proposed changes in its local exchange rates for customer-owned pay telephones.

The Department of Public Service (the Department) opposed the rate change, saying it should be considered in a general rate case. The Department also stated that the Company had failed to submit adequate cost information to support the proposed rate change.

The Minnesota Independent Payphone Association (MIPA) opposed the proposed rates on grounds that it was unduly discriminatory to charge separate rates for customer-owned pay telephones. MIPA also argued that the Company had based its proposed rates on inaccurate cost information.

On April 12, 1990, the Commission issued its ORDER ACCEPTING FILING UNDER MINN. STAT. § 237.075 (1988), SUSPENDING PROPOSED RATES, AND INITIATING AN INVESTIGATION INTO REASONABLENESS OF PROPOSED RATES.

On April 23, 1990, the Department filed a petition for reconsideration of the April 12, 1990 Order. The Department argued that the Commission lacked the statutory authority to

¹ On October 1, 1990, the Commission approved the merger of Northwestern Bell Telephone Company and two other telephone companies into U S West Communications, Inc. (USWC), effective January 1, 1991.

consider the proposed rate change outside of a general rate case, that the Company's filing should be dismissed for failure to comply with the requirements of Minn. Stat. § 237.075 (1988), and that the proposed rate change should be rejected on the merits.

On May 17, 1990, the Commission issued its ORDER DENYING RECONSIDERATION AND ESTABLISHING NEW TIME FRAMES. The Commission found that passage of Minn. Stat. § 237.63 (Supp. 1989) did not require the Commission to abandon its long standing practice of examining miscellaneous rate change filings under Minn. Stat. § 237.075. The Commission noted that Minn. Stat. § 237.63 (Supp. 1989) does not claim to be the exclusive means by which miscellaneous rate changes can be made, as the Department had argued, and in fact clearly recognizes that miscellaneous rate changes may be considered under Minn. Stat. § 237.075. As to the Company's alleged failure to comply with the filing requirements of Minn. Stat. § 237.075 (1990), the Commission found that since the non-compliance was inadvertent and remediable, the Commission had properly granted the Company additional time to remedy these items. Finally, the Commission found that the Department's substantive objections to the proposed rate changes were properly deferred to when the merits of the Company's proposal came before the Commission. The Order directed the Department to submit, within 45 days, a report on the reasonableness of the Company's proposed rates.

On June 13, 1990, the Company submitted additional information to the Department, including a modification of its original rate proposal, proposed tariff changes and cost information.

On July 2, 1990, the Department filed its report on the reasonableness of the Company's modified proposed rates and reiterated its position that the rate proposal does not meet the requirements established in Minn. Stat. § 237.075 (1990). On July 12, 1990, the Company filed comments in response to the Department's July 2, 1990 report.

On September 26, 1990, the Department filed a supplementary report to which the Company responded on October 15, 1990.

On February 6, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

In its initial filing on April 18, 1989, the Company proposed two rate options that reduced rates for private Payphone Access Line customers. The first option was a message rate service that reduced the monthly recurring rate and message rates. The second option was a flat rated service that was priced to the 600 call volume level.

On June 13, 1990, the Company revised its proposal. Unlike the original two-option rate proposal, the revised proposal was to use the currently tariffed business flat rate and merely add to it a call allowance, i.e. all calls in excess of the 300-call allowance would be charged \$.08 per message.

The Department opposed approval of the Company's proposal to change its rates for private pay telephones on three grounds. The Commission rejects each of these grounds.

1. Commission Authority

First, the Department contended that the Commission did not have the authority to decide the Company's rate proposal outside a general rate case. The Department argued that Minn. Stat. § 237.63 (1990) provides the only alternative to a general rate case for approving rate changes and the Company's proposal does not fit into any of the categories of miscellaneous rate changes provided by Minn. Stat. § 237.63 (1990). Therefore, the Department reasoned, the Commission lacked statutory authority to consider the Company's miscellaneous rate changes outside a general rate case.

The Commission has previously considered and rejected this argument. In its May 17, 1990 ORDER DENYING RECONSIDERATION AND ESTABLISHING NEW TIME FRAMES, the Commission found that Minn. Stat. § 237.63 (1990) did not provide the only statutory authority for changing rates for noncompetitive services outside of a general rate case and that the Commission had authority under Minn. Stat. § 237.075 (1990) to approve miscellaneous rate changes. The Commission noted that in adopting Minn. Stat. § 237.63 (1990) the legislature did nothing to eliminate the Commission's established practice of examining miscellaneous rate change filings under Minn. Stat. § 237.075. Indeed, Minn. Stat. § 237.63, subd. 4 (c) (1990) specifically states that tariff changes that do not fit into the four categories established in that statute and that do not require a review of the company's gross revenues "must be reviewed in accordance with section 237.075, subdivisions 1 and 2,...."

Parties are not entitled to reconsideration of Commission orders beyond the time-limits and review mechanisms provided by law. In this case, the Department had a right to seek judicial review of the Commission's May 17, 1990 ORDER DENYING RECONSIDERATION AND ESTABLISHING NEW TIME FRAMES pursuant to Minn. Stat. § 237.25 (1990). No appeal having been taken from the May 17, 1990 Order, it is "final and conclusive" in this matter as provided by Minn. Stat. § 237.26 (1990). Clearly, then, the Department is not entitled to reconsideration of the Commission's finding in the May 17, 1990 Order that the Commission has authority to consider the Company's proposed rate change under Minn. Stat. § 237.075. Cf. In the Matter of a Tariff Filing by MCI to Provide Operator Assisted Calling to its Dial "1", Prism III and Prism Plus

Customers, and to Introduce Payphone Service, Institutional Phone Service, and the LEC Calling Card Service, Docket No. P-443/EM-89-305, ORDER REJECTING REFUND PLAN AND REQUIRING FURTHER FILINGS (February 26, 1991) in which the Commission noted that a company's failure to seek reconsideration of a Commission order pursuant to Minn. Rules, part 7830.4100 by filing a petition with the Commission within 20 days from the date of the Order extinguished the company's right to reconsideration of the order.

Although the Commission always has discretion to revisit its Orders on its own motion, the Commission does not choose to do so in this case. The Department makes no arguments on this issue that the Commission did not consider and reject in the May 17, 1990 Order. Accordingly, the Commission will proceed to exercise its authority to review and approve the Company's miscellaneous rate change pursuant to Minn. Stat. § 237.075, subd. 1 and 2 (1990).

2. Adequacy of Filing in Support of Rate Change

Proposed miscellaneous rate changes that do not meet the requirements of Minn. Stat. § 237.63 (1990) are reviewed as required by Minn. Stat. § 237.075, subd. 1 and 2. Minn. Stat. § 237.63, subd. 4c (1990). Subdivision 1 of Minnesota Stat. § 237.075 (1990) sets out the formal filing requirements for such miscellaneous rate changes. Subdivision 2 establishes, among other things, the substantive standard that the proposed rates must meet in order to gain approval.

The Department alleged that the Company's filings² in support of its proposed service rate changes do not meet the requirements of Minn. Stat. § 237.075, subd. 1 and 2 (1990) for two reasons. First, the Department argued that the filings did not meet the formal filing requirements of Subdivision 1 because they failed to provide expert opinion testimony and the exhibits filed in support of the rate changes were so incomplete that they cannot be considered "substantiating documents" as required by Minn. Stat. § 237.075, subd. 1 (1990). Second, the Department argued that the documents that the Company did file in support of the rate change do not in fact substantiate the reasonableness of the proposed changes and hence did not meet the substantive standard of Subdivision 2.

² The Company's substantive filings in this matter consist of 1) its initial proposal and supporting documents filed April 19, 1989; 2) its revised rate proposal and over 1,000 pages of cost data showing the access and usage costs of providing service to customer-owned pay telephones filed June 15, 1990. Finally, the Company provided the Department with an additional 375 pages of the cost information in response to an information request.

a. Compliance With Statutory Filing Requirements

Subdivision 1 of Minn. Stat. § 237.075 (1990) requires that the Company give the Commission 60 day "notice" of its proposed miscellaneous rate change. The statute specifies the items to be included as part of this notice:

The notice shall include statements of facts, **expert opinions, substantiating documents, and exhibits**, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect. Minn. Stat. § 237.075, subd. 1 (1990). (Emphasis added.)

Expert Opinion: In judging compliance with the statute's formal filing requirements, the Commission does not evaluate the weight to be given to the document in question or reach the ultimate question whether it adequately supports the fairness and reasonableness of the rate changes proposed. Instead, the Commission is called to make two rather narrow decisions. With regard to the "expert opinion" requirement, the first is the narrow almost clerical decision whether the Company has filed a document that it relies on as expert opinion. The second decision is whether the filed document is blatantly not what it is represented to be.

The Department acknowledged that the Company's Director of Regulatory Affairs signed the filing and explained the changes, but contended that the signed explanation clearly did not rise to the level of expert opinion as required by the statute.

The Commission disagrees. Prior to the adoption of Minn. Stat. § 237.63 in 1987, the Commission's interpretation of the "expert opinion" requirement in the context of miscellaneous rate change proceedings under Minn. Stat. § 237.075 included the opinion of persons such as the Company's Director of Regulatory Affairs. The Commission finds nothing in Minn. Stat. § 237.63 that would require a change from that interpretation. In such circumstances, the Commission cannot find that the Company has not met the formal statutory requirement that it file expert opinion in support of its proposed rate changes.

Substantiating Documents and Exhibits: The Department also acknowledges that the Company filed some documents that it identified as "substantiating documents and exhibits" but alleges that those documents, i.e. the cost studies filed by the Company, are so defective and incomplete that they cannot qualify as "substantiating documents, and exhibits, supporting the change requested," as required by Minn. Stat. § 237.075, subd. 1 (1990).

According to the Department, the specific shortcomings of the Company's cost studies are:

1. The cost studies are not incremental cost studies as the Commission has ordered in the Private Line Case, Docket No. P-421/M-87-596, i.e they do not consider an additional increment of output to a baseline output for some specific period of time;
2. The cost studies include spare capacity for growth in the cost study for the specific service instead of assigning spare capacity for growth to a common cost for the service which uses the loop;
3. The Company failed to update 1990 costs in other services due to changes in the treatment of public administration expenses;
4. The Company's usage data is based on months that are not representative of seasonal changes; and
5. The Company's usage costs are based on flat rate usage costs which do not reflect any measuring or metering costs, an inherent feature of private pay phone service as a metered service.

Again, in judging formal compliance with the statute's filing requirements, the Commission is called to make two narrow decisions, neither of which is the ultimate decision whether the filed documents actually substantiate the fairness and reasonableness of the proposed rates.

The first is the almost clerical decision whether the Company has filed documents and exhibits to substantiate, i.e. in support of, its rate change request. This the Company has clearly done.

The second decision is whether the filed documents are so blatantly defective or are so clearly not what they purport to be that the proposal should be dismissed. The Company's cost studies are not of this vacuous quality.

In such circumstances, the Commission cannot find that the Company has not met the formal statutory requirement that it file expert opinion in support of its proposed rate changes. Again, in judging compliance with the statute's formal filing requirements, the Commission does not evaluate the weight to be given to the "substantiating" documents. This occurs only when the Commission considers the merits of the filing as it proceeds to do in the following section.

b. Adequacy of the Company's Cost Studies and Expert Opinion to Substantiate the Reasonableness of its Proposed Rates

The Company has filed a cost study focused on the line sold to coin telephone providers. The cost study consisted of detailed information and methodology, over 1,000 pages of cost study information, backup and workpapers. The Department does not dispute the fact that the study shows that the proposed rates cover the cost of providing the service, thereby assuring that the service is not being subsidized by other ratepayers. Instead, the Department alleges that the study is too narrow and provides inadequate information to evaluate the reasonableness of the proposed rate changes.

The Commission finds that the Company's study is adequate to meet the Commission's needs. In urging dismissal of the Company's proposal because of alleged inadequacies of the Company's cost studies, the Department holds the cost studies to a standard of precision not applicable in setting residual rates in a miscellaneous rate change proceeding pursuant to Minn. Stat. § 237.075 (1990). In the Department's view of how fair and reasonable rates are established, any incompleteness or defect in the cost study is cause for great concern. The Commission values cost studies but does not place the same emphasis on them.

Regarding the role of costs in ratesetting, the Minnesota Supreme Court in St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 312 Minn. 250, 251 N.W.2d 350 (1977), cited with approval the comments of the U.S. Supreme Court in Permian Basin Area Rate Cases, 390 U.S. 747, 815, 88 S.Ct. 1344, 1385, 20 L.ed.2d 312, 363 (1963):

Cost and non-cost factors do not, ..., race one against the other; they must be, ..., harnessed side by side. The Commission's responsibilities necessarily oblige it to give continuing attention to values that may be reflected only imperfectly by producers' costs; a regulatory method that excluded as immaterial all but current or projected costs could not properly serve the consumer interests placed under the Commission's protection. St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, supra at 257.

Moreover, the Commission recognizes the limitations of any cost study, no matter how complete and competently done. The role of cost studies is to provide the Commission a reasonably accurate picture of the dynamics involved in the proposed rate change and to indicate whether the rates are high enough to cover the cost of providing the service. The Commission is satisfied that the Company's cost studies meet that standard.

In addition, there are substantial non-cost factors that support the proposed rate changes. The Company's proposed rates are strongly supported by numerous independent pay telephone providers. The fact that the rates can be reduced and still produce revenue in excess of the cost of providing the service

suggests that the current rates are excessive. Even the Department acknowledges that the proposed rate reductions will result in a more equitable pricing structure to the pay telephone owners than the existing one. In addition, there is evidence that the current pay-phone rates are discouraging entry into the pay telephone market. The Commission finds that the increased competition between pay telephone providers likely to follow reduction of these rates will serve the public interest. At the same time, these rate reductions present no specter of predatory pricing. Because the Company already has a monopoly on the provision of pay telephone access service in its exchanges, there are no competitors who would be driven out of business if they were unable to match the rate reductions proposed herein.

In sum, the Commission finds that the cost studies provided by the Company when viewed in conjunction with the expert opinion filed explaining the reasons for the rate changes are adequate. The Company's filings together with the additional factors considered here support a finding that the proposed rate changes are fair and unreasonable and the Commission so finds.

3. Precedent of Approving the Proposed Rate Changes

The Department opposes the proposed rate decreases because it fears that the Company will use it as a springboard to request rate increases in another residually-priced service in the future. The Department expresses concern that the Commission may come to view a decrease in the rates for this residually priced service as justification for future rate increases in other basic local services on the theory that to do so would make the Company "whole." The Department notes that in several recent filings, the Company has advanced the notion that because of certain revenue losses, a proposed price increase is justified because it will leave the Company without a net increase in revenue, i.e. revenue neutral.³ The Department argues at length why such an

³ The Commission notes that it has not approved this argument in any case to-date. In Docket No. P-421/EM-89-1125, the Company stated that a price increase for person-to-person operator service was justified by the fact that the Commission had previously approved a price decrease for another service, recording service. The Company subsequently withdrew its request before Commission took action on it. In another matter, the Company argued that it was justified in receiving an increase in income from providing directories because it had lost revenues in the services. The Commission denied the Company's request for authority to charge for the directories. In the Matter of a Proposal by Northwestern Bell Telephone Company to Begin Charging for Telephone Directories and to Make Refunds for Charges Collected in Error, Docket No. P-421/EM-89-1105, ORDER APPROVING REFUND PLAN, DENYING PROPOSAL TO CHARGE FOR TELEPHONE DIRECTORIES, AND INITIATING INVESTIGATION (August 30, 1990).

argument must not be accepted.

The Commission finds that the proper time for considering the Department's opposition to the Company's revenue-neutral argument is in a docket in which the Company is actually using that argument. This case, which only involves a rate decrease, does not raise this issue. Accordingly, the Department's concern does not deter the Commission's decision in this case to find the Company's proposed rate changes fair and reasonable and authorize the Company to charge those rates.

ORDER

1. U S West Communication's (USWC) proposed changes in its local access rates for customer-owned pay telephones filed with the Commission on June 13, 1990 are approved.
2. Within 10 days of this Order, USWC shall file a tariff reflecting the rates approved in Ordering Paragraph 1 for the provision of local access service for customer-owned pay telephones.
3. The rates filed in a tariff pursuant to Ordering Paragraph 2 shall become effective and USWC will be authorized to charge such rates as of June 1, 1991.
4. USWC shall give written notice of these changed rates to all current customers of this service, local access service to customer-owned pay telephones, at least 10 days prior to the effective date of such rates.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)